



ORIGINAL VILLAGE OF MUNDELEIN

Marilyn Sindles, Mayor

Pamela Keeney, Clerk

RSB
Noted
NOTED
ms
11/19/03

440 East Hawley Street
Mundelein, IL 60060
www.mundelein.org

T01-0029

Telephone: (847) 949-3200
Fax: (847) 949-0143
info@mundelein.org

November 6, 2003

Maintenance Agreement
Between Attorney and
Railroad Controls, Ltd.

RECEIVED
NOV 19 2003

Illinois Commerce Commission
RAIL SAFETY SECTION

Mr. Michael Stead
Rail Safety Program Administrator
Illinois Commerce Commission
Transportation Division/Railroad
527 E. Capitol Ave.
P. O. Box 19280
Springfield, IL 62794-9280

Dear Mr. Stead:

Attached is an executed copy of the three-year maintenance agreement between the Village of Mundelein and Railroad Controls, Ltd. for maintenance of the nine wayside horn crossings in the Village of Mundelein. The previous copy I sent to you on October 3, 2003 did not have Exhibit C, the License Agreement between the Village of Mundelein and Wisconsin Central Railroad, attached. This is a copy of the complete document.

If you have any questions please contact me.

Sincerely,

Michael A. Flynn
Assistant Village Administrator

MAF/ch
Attachment

cc: Michael Barron, Canadian National/Illinois Central
Kurt Anderson, Railroad Controls LLC

DOCKETED

BB/MS

VILLAGE OF MUNDELEIN, ILLINOIS

AHS MAINTENANCE AGREEMENT

This AHS Maintenance Agreement (hereinafter referred to as "Agreement") is made this 1st day of October, 2003, effective on the 1st day of October, 2003, between the Village of Mundelein, Illinois (hereafter referred to as the Village) organized in the State of Illinois, having its principal office at 440 East Hawley Street, Mundelein, IL 60060, and Railroad Controls, L.P., (hereinafter referred to as "RCL"), a Texas Limited Partnership, having its principal address at 7471 Benbrook Parkway, Benbrook, Texas, 76126.

WHEREAS, the Village has maintenance responsibility for nine (9) AHS locations within the State of Illinois; and

WHEREAS, the Village desires to obtain maintenance services; and

WHEREAS, RCL desires to render maintenance services to the Village for nine (9) AHS locations in accordance with the terms and provisions set forth in this Agreement,

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth in this Agreement, the parties hereto do hereby mutually agree as follows:

1. **SCOPE OF SERVICES:** RCL will provide the following services to the Village during the term of this Agreement.
 - A. **Maintenance and Inspection Services.** RCL shall provide a signal maintainer for maintenance and inspection of the Village's nine (9) AHS locations, as described in **Exhibit A**, in accordance with manufacturer's recommendations.
 - B. **Emergency Services.** RCL's signal maintainer shall be available for emergency repair of the AHS within 48 hours of initial notification, during the term of this Agreement. Further, RCL shall provide a communications system consisting of a pager and cellular telephone for each maintainer to facilitate the emergency notification by the Village

- C. **Damaged AHS Equipment.** RCL, at the Village's request, shall repair and/or replace AHS equipment damaged and/or destroyed by a third party. The Village shall bear the cost of such replacement regardless of availability of reimbursement of its costs from the party or parties responsible for the damage or destruction.
 - D. **Materials and Supplies.** RCL shall furnish all AHS materials and supplies consumed by RCL in providing the maintenance services described in this Agreement. These materials and supplies shall become the property of the Village after being stored or installed by RCL and payment is made to RCL. Cost of providing these materials and supplies shall be born by the Village. Applicable duties, taxes, and freight charges will be passed on to the Village at RCL's cost. Charges for materials and supplies shall be added to the Village's monthly invoice for maintenance and shall be identified by part name and, if applicable, by the location requiring the specific material or supply. In all cases, RCL will utilize parts and material from the Village's inventory prior to purchasing new parts and material.
 - E. **Consulting Services.** RCL, at the request of the Village, shall render advisory and consulting services to the Village with respect to the operation or improvement of the AHS equipment.
- 2. **STORAGE SPACE.** The Village shall bear the cost of providing space for the storage of all materials used by RCL in performing the maintenance services described in this Agreement.
 - 3. **INSURANCE.** RCL shall, during the term of this Agreement, maintain the following insurance:
 - A. Worker's Compensation Insurance;
 - B. Automobile Insurance with a face amount of One Million and no/100 Dollars (\$1,000,000.00), and
 - C. Comprehensive general liability in an amount not less than \$7,000,000 combined single limit with an aggregate of \$8,000,000.
 - D. RCL shall furnish proof of such insurance to the Village upon execution of this Agreement.
 - 4. **FEES.** In consideration for the services to be rendered by RCL under the terms of the Agreement, except as provided herein, the Village shall make

payment to RCL as follows:

- A. A monthly billing shall be provided to the Village on or about the 1st day of each month and shall be payable by the Village to RCL on or before the last day of that month; and
 - B. Monthly charges shall be based on RCL's written quotation for AHS maintenance service as evidenced in **Exhibit B** along with any additional actual expenses incurred such as Railroad flagging.
5. **TERM.** This Agreement shall remain in full force and effect for a period of three (3) years from the effective date hereof.
6. **TERMINATION.** This Agreement may be terminated by either RCL or the Village with ten (10) days written notice in the event of either RCL's or the Village's bankruptcy, insolvency or assignment of the Agreement for the benefit of creditors or thirty (30) days written notice in the event of either RCL or the Village's default of the terms of this Agreement. Charges incurred for the terminated month shall be prorated according to actual time served. Within thirty (30) days following the termination of this agreement, RCL shall submit a final invoice to the Village detailing all outstanding charges due to RCL.
7. **CONFIDENTIALITY.** Neither party shall, during the term of this Agreement, disclose any confidential information; the disclosure of which would be detrimental to the other party.
8. **BINDING EFFECT.** The Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors, assigns and personal representatives.
9. **SEVERABILITY.** If any provision of this Agreement is determined by a competent legal authority to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.
10. **GOVERNING LAW.** The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.
11. **RAILROAD LICENSE.** RCL, as the Village's contractor, agrees to abide by the terms and requirements of the LICENSEE in the Railroad License Agreement attached as **Exhibit C**. The Village shall bear all railroad charges associated with the work covered by this agreement. RCL agrees to abide by and undertake all indemnification and insurance obligations imposed upon the Village in said Railroad License Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 1stth
day of October, 2003.

Witness:

Ceryl Howard

By: *CERYL HOWARD*

Village of Mundelein, Illinois

Marilyn Sindles

By: Marilyn , Mayor
Sindles

Village of Mundelein, IL

Witness:

Kurt Anderson

By: *Kurt Anderson*

Railroad Controls, L.P.

Sanford Green

By: Sanford Green, Sr. Vice President

VILLAGE OF MUNDELEIN, IL
AHS LOCATIONS
EXHIBIT "A"

<u>Location</u>	<u>DOT No.</u>	<u>Milepost</u>
Butterfield Road	689698N	CM 37.37
IL Rte 60	689699V	CM 37.50
Allanson Road	689701U	CM 38.65
Hawley Street	689703H	CM 39.80
Park Street	689704P	CM 39.94
IL Rte 176	689705W	CM 40.10
Dunbar Road	689707K	CM 40.85
Winchester Road	689709Y	CM 41.78
Peterson Road	689710G	CM 42.38

**VILLAGE OF MUNDELEIN, IL
AHS MAINTENANCE AGREEMENT
EXHIBIT "B"**

Railroad Controls Limited agrees to perform monthly inspections at nine (9) AHS locations in the Village of Mundelein, IL for the following fees:

Cost per month (10/01/03-10/01/04): \$ 650.00 plus flagging costs

Cost per month (10/01/04-10/01/05): \$ 675.00 plus flagging costs

Cost per month (10/01/05-10/01/06): \$ 700.00 plus flagging costs

1. Check for proper operation of AHS equipment once per month.
2. Perform preventive maintenance as per manufacturer's recommendations.
3. Respond to trouble calls within 48 hours of notification from the Village of Mundelein.

Additional Services and Fees if requested by the Village:

Advisory and consulting services to be performed at a fixed rate of \$95.00 per hour plus expenses.

Supervisory services to be performed at a fixed rate of \$70.00 per hour plus expenses.

Signal circuit plan drafting charges to be performed at a fixed rate of \$50.00 per hour plus supplies.

Services other than periodic monthly, quarterly, and annual maintenance inspections performed at a fixed rate of \$65.00 per hour plus expenses, including equipment rental, flagging, etc.

[S:\ENG.RE\RE27] (Revised 2/14/96)

License 5322-W

LICENSE

Subject to the terms and conditions hereinafter set forth, permission is hereby granted to Village of Mundelein, 440 East Hawley Street, Mundelein, Illinois, (hereinafter "LICENSEE") to enter upon the premises of WISCONSIN CENTRAL LTD. ("RAILROAD") located at

the right-of-way of RAILROAD at Mundelein, Lake County, Illinois (the "Premises");

for the purpose of maintaining an automated horn crossing warning system at Butterfield Road, Illinois Route 60, Allanson Road, Hawley Street, Park Street, Maple Street, Dunbar Road, Winchester Road and Peterson Road in/near the Village of Mundelein in accordance with attached plans (the "FACILITY") and for no other purpose whatsoever.

The permission hereby granted is subject to:

1. Existing leases, easements, licenses and permits heretofore granted by the RAILROAD or its predecessors in interest affecting the Premises.
2. Cancellation effective immediately upon LICENSEE's termination of maintenance responsibility for the FACILITY or upon their no longer being a need for maintenance of the FACILITY. Upon termination of this LICENSE, and if permitted by law or regulatory order, LICENSEE shall remove the FACILITY and restore the property of RAILROAD to a condition satisfactory to the RAILROAD, all at LICENSEE's costs.
3. All work or any operation shall be done in a good and workmanlike manner so as not to interfere with the tracks, operation of trains, communications and other facilities of the RAILROAD or railroad companies permitted by RAILROAD to use the right-of-way tracks or facilities of the RAILROAD (the "Other Users").
4. In the event the RAILROAD's Chief Engineer or his authorized representative determines that it will be necessary to furnish a flagger during the performance of the work hereinabove described, the LICENSEE agrees to reimburse the RAILROAD, as the case may be, for the expense of flagging incurred by the RAILROAD to conduct said work in accordance with the requirements of the Chief Engineer or his authorized representative of the RAILROAD.

5. No excavation closer than 25 feet to the track, and no vehicles to be closer than 25 feet to the track.
6. Existing slope of railroad bed should not be disturbed. All holes or depressions made in the Premises shall be filled and leveled by LICENSEE in a manner satisfactory to the RAILROAD's Chief Engineer or his authorized representative.
7. If it is necessary to remove any right-of-way fences to facilitate the performance of the work permitted hereunder, such fences shall be removed and restored by, and at the expense of, the LICENSEE. Any brush knocked down should be removed from railroad property.

Payments by the Licensee:

The RAILROAD shall not be responsible for any costs or expenses arising out of, or in any way related to, performance of the work. All such costs and expenses, including but not limited to, permit and license fees shall be paid by the LICENSEE.

Indemnification by Licensee:

1. To the extent permitted by law, LICENSEE agrees to RELEASE, INDEMNIFY, HOLD HARMLESS AND FOREVER DISCHARGE RAILROAD, its parent and affiliate companies, and each of their insurers, employees, officers, directors, agents, successors and any other railroad using the lines of RAILROAD (the "Released Parties") of and from any claims, liabilities, causes of action, damages or suits, including costs and attorney's fees, resulting from or in any way related to any injury to any of the LICENSEE's employees, agents, contractors or invitees (including any resulting death), or any loss or damage to the property of, or property under the control of, LICENSEE, its employees, agents, contractors or invitees, arising due to any physical condition, whether patent or latent, of RAILROAD's real or personal property. Indemnity obligations arising during the term of this License will survive the termination of the License.

For purposes of this indemnity, RAILROAD has NO DUTY to do any of the following:

- A. to warn or otherwise take reasonable steps to protect entrants from conditions on the premises that are known to entrants, are open and obvious, or can reasonably be expected to be discovered by the entrants;
- B. to warn of latent defects or dangers, or defects or dangers unknown to RAILROAD;
- C. to warn of any dangers resulting from misuse by entrants of the Premises or anything affixed to or located on the Premises;

- D. to protect entrants from their own misuse of the Premises or of anything affixed to or located on the Premises;
 - E. to inspect or police the Premises.
2. LICENSEE shall comply with all applicable ordinances, rules, regulations, requirements, and laws of any governmental authority having jurisdiction of environmental standards and conditions. If, in the conduct of LICENSEE's operations, LICENSEE shall violate any such ordinance, rule, regulation, requirement, or law, LICENSEE agrees to, and shall, protect, save harmless, defend, and indemnify to the extent permitted by law, the RAILROAD from and against any and all penalties, fines, costs, and expense (including reasonable attorney's fees and costs of defense) imposed upon or incurred by RAILROAD caused by, arising out of, resulting from, or in any way connected with such violation or violations. The liability of LICENSEE hereunder shall survive termination of this Agreement.
3. The LICENSEE assumes full responsibility for (a) determining the location and existence of any pipes, wires, conduits, sewers, piling, structures, or other obstructions to the work performed hereunder; and (b) all liability for loss or damage arising out of LICENSEE's failure to do so.

No Liens

The LICENSEE shall fully protect the Premises and the RAILROAD from and against all mechanic's and materialmen's liens accruing by reason of the work performed hereunder.

Insurance by LICENSEE

1. Railroad Protective Insurance-During Work

If LICENSEE shall use its own forces or shall employ a contractor for the maintenance of the FACILITY, then, before commencing, LICENSEE or their contractor, as the case may be, shall provide and maintain the following insurance, in form and amount and with companies satisfactory to, and as approved by, RAILROAD:

- A. **Railroad Protective Insurance, with limits of not less than \$7,000,000 per occurrence for Bodily Injury Liability, Property Damage Liability and Physical Damage to Property, with \$8,000,000 aggregate for the term of the policy with respect to Bodily Injury Liability, Property Damage Liability and Physical Damage to Property. The policy must name**

**WISCONSIN CENTRAL LTD.
Attn: Mark Gibson
P. O. Box 5062
Rosemont, IL 60017-5062
Reference Document No. 5322-W**

as the Named Insured, and shall provide for not less than ten (10) days prior written notice to RAILROAD of cancellation of, or any material change in, the policy.

2. General:

Before commencing work hereunder, and until this License shall be terminated, the LICENSEE shall provide and maintain the following insurance, in form and amount with companies satisfactory and as approved by the RAILROAD, and shall furnish the RAILROAD with a Certificate of Insurance evidencing such coverage:

- A. Statutory Workers' Compensation and Employer's Liability Insurance.
- B. Automobile Liability in an amount not less than \$1,000,000 combined single limit.
- C. Comprehensive General Liability in an amount not less than \$7,000,000 combined single limit with an aggregate of \$8,000,000. The policy must name

Wisconsin Central Ltd.
Attn: M. E. Gibson, Mgr. Real Estate
P.O. Box 5062
Rosemont, IL 60017-5062
Reference Document No. 5322-W

as an additional insured and must not contain any exclusions related to doing business on, near or adjacent to railroad facilities.

- D. Errors and omissions insurance in an amount not less than \$1,000,000.

Upon request, the LICENSEE shall deliver a certified, true and complete copy of the policy or policies. The policies shall provide for not less than ten (10) days' prior written notice to the RAILROAD of cancellation of, or any material change in, the policies.

Notwithstanding anything to the contrary herein, the parties agree that the LICENSEE's obligation to indemnify hereunder, if any, shall be limited to and not exceed the insured amount required by this Agreement.

RAILROAD reserves the right, upon request from LICENSEE, to amend these insurance requirements as appropriate provided RAILROAD's liability concerns are met. RAILROAD will memorialize such amendments in writing.

Notice to Railroad of Commencement of Work

The LICENSEE, or the LICENSEE's contractor, as the case may be, shall not commence any work without first giving not less than three (3) business days' prior notice to the

RAILROAD's Chief Engineer or his authorized representative at the RAILROAD's office located at Stevens Point, Wisconsin, Phone (715) 345-2511.

Survey Borings, etc.

The location and log of any borings made on the RAILROAD's property shall be kept by the LICENSEE and copies of such log and any survey made on the RAILROAD's property shall be furnished to the RAILROAD.

No Assignment

This License is personal to LICENSEE and may not be assigned except upon the written consent of RAILROAD. Any assignment without RAILROAD's consent is null and void and immediately terminates this License.

Breach

If LICENSEE breaches any part of this License, then, upon 5 days' notice, this License shall terminate and be of no future force and effect. Notice is deemed given when sent by regular 1st class mail to LICENSEE at the address shown on page 1.

The above terms and conditions are hereby accepted and agreed to.

WISCONSIN CENTRAL LTD.

By

Title

R. Blumke
V.P. - Engr.

Dated: 4-3 20 01

By

Title

James J. Miller
Mayor

Dated: March 6 20 01

ATTACHED PLANS

A-1 TO A-9

EXHIBIT A-1 HAS TWO CROSSINGS ON IT, SO THERE IS NO A-2

VILLAGE OF MUNDELEIN, IL
AHS LOCATIONS
EXHIBIT "A"

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